

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

JUL 2009
RECEIVED
LAND DIVISION

IN THE MATTER OF:

The City of Atmore
Atmore Landfill
Solid Waste Permit No. 27-09
Escambia County

Consent Order No. 09-XXX-CSW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Atmore Landfill (hereinafter "the facility") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Solid Wastes and Recyclable Materials Act (SWRMMA), Ala. Code §§ 22-27-1 through 22-27-18 (2006 Rplc. Vol. and 2008 Cum. Supp.).

STIPULATIONS

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
2. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the State agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2008 Cum. Supp.).
3. On July 7, 1993, the Department issued Solid Waste Permit (hereinafter "the Permit") No. 27-09 to The City of Atmore (hereinafter "the Permittee") for the operation of a construction and demolition waste landfill (hereinafter "the Facility") located on a part of the SE ¼ of Section 29, Township 2 North, Range 6 East on County Road 14 in Escambia County, Alabama. The Department issued a renewal Solid Waste Permit No. 27-09 to the Permittee on October 8, 1999 and on October 20, 2005.

4. On August 12, 2005, Department personnel conducted an inspection of the Permittee's Facility to determine compliance with Division 13 of the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin Code r. 335-13-4-.21(2)(a) requires that open burning of solid waste at any landfill unit be approved by the Department. At the time of the inspection, Department personnel documented that the Permittee was open burning without receiving approval from the Department.

5. On September 9, 2005, the Department issued a Notice of Violation (hereinafter "NOV") to the Permittee for the violations documented during August 17, 2005, inspection.

6. On November 20, 2005, the Department received a written response to the September 9, 2005, NOV.

7. On November 25, 2008, Department personnel conducted an inspection of the Permittee's Facility to determine compliance with Division 13 of the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin Code r. 335-13-4-.23(1)(a)1. requires that all waste shall be covered with a minimum of six inches of compacted earth or other alternative cover material that includes but is not limited to foams, geosynthetic or waste products, and is approved by the Department shall be added at the conclusion of each week's operation or as otherwise specified by the Department to control disease vectors, fires, odors, blown litter and scavenging. At the time of the inspection, Department personnel documented that the Permittee had failed to properly cover waste on a weekly basis.

8. On December 2, 2008, the Department issued a NOV to the Permittee for the violations documented during the November 25, 2008, inspection.

9. On January 26, 2009, the Department received a written response to the December 2, 2008, NOV.

10. On February 13, 2009, Department personnel conducted an inspection of the Permittee's Facility for compliance with Division 13 of the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin Code r. 335-13-4-.17(3) requires that owners or operators of all facilities must design, construct and maintain on-site drainage structures to carry incident precipitation from the disposal site so as to minimize the generation of leachate, erosion and sedimentation. Run-off from the landfill must be routed to a settling basin or other sedimentation control structure to remove sediment prior to release onto adjacent properties or waters. At the time of the inspection, Department personnel documented that sediment was washing off the permitted site onto adjacent properties. Adequate controls were not employed by the Permittee to properly manage sedimentation.

b. ADEM Admin Code r. 335-13-4-.19 requires that the owner or operator of the facility must control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate. At the time of the inspection, Department personnel documented three areas where the Permittee had failed to employ adequate measures to properly control public access.

11. On February 18, 2009, the Department issued a NOV to the Permittee for the violations documented during the February 13, 2009, inspection.

12. On March 11, 2009, the Department received a written response to the February 18, 2009, NOV.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Permittee; the economic benefit which delayed compliance may confer upon the Permittee; the nature, extent and degree of success of the Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or

exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Permittee did not comply with provisions of ADEM Admin. Code div. 335-13. The Department has no evidence of any irreparable harm to the environment, any threat to human health, or any threat to the safety of the public as a result of these violations.

B. **THE STANDARD OF CARE:** The Permittee failed to operate in a manner commensurate with applicable solid waste requirements.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has been unable to ascertain if the Permittee has realized a significant economic benefit as a result of the violations noted. However, the Permittee did not incur costs associated with operating in accordance with Division 13 Regulations.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** Department personnel did not observe any mitigating efforts employed by the Permittee to minimize the effects of sedimentation on any potential receiving waters.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Permittee has a history of similar violations.

F. **THE ABILITY TO PAY:** The Permittee has not alleged an inability to pay the civil penalty.

G. **OTHER FACTORS:** It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, the Permittee, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Order with the following terms and conditions:

A. Pursuant to Ala, Code § 22-22A-5(18)a.4. (2006 Rplc. Vol.) the Permittee agrees to pay to the Department a civil penalty in the amount of \$1,000.00, payable in quarterly installments, to be paid in full within 365 days from the execution date of this Order.

B. Payments of the penalty shall be by cashier or certified check made payable to the "Alabama Department of Environmental Management" and remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any check submitted to the Department pursuant to this order shall reference Atmore Landfill name and address, and the ADEM Consent Order number of this action.

C. That, immediately upon the effective date of this Order and continuing each and every day thereafter, the Permittee shall comply with all applicable provisions of ADEM Admin. Code div. 335-13.

D. The Permittee shall, within 30 days of the effective date of this Order, submit a report to the Department outlining procedures and/or protocols that will be employed by the Permittee to ensure compliance at the facility in the future. The plan should address what type of monitoring

techniques will be employed, the frequency of the monitoring techniques, and what type of documentation will be maintained following monitoring events.

E. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, State, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including

documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of 10 working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; the Permittee shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

J. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of this Consent Order.

K. The parties agree that this Order shall not affect the Permittee's obligation to comply with any federal, State, or local laws or regulations.

L. The parties agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

M. The parties agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

N. The parties agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The parties agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

THE CITY OF ATMORE

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Howard O. Shell
(Signature of Authorized Representative)

HOWARD SHELL
(Printed Name)

MAYOR
(Printed Title)

6-30-09
(Date Signed)

Onis "Trey" Glenn, III
Director

(Date Signed)